IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION No.19784 OF 2005

Between:

M/s.Sujana Enterprises, Plot No.B-13,

Industrial Estate, Kurnool Road, Pernamitta,

Prakasham District, rep. By its Proprietor

Mr.K.Ravindra.

..... PETITIONER

AND

The Assistant Commercial Tax Officer (Int) FAC,

Office of the Deputy Commissioner (CT),

Chittoor Division, Chittoor, and another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE

J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE

M.VENKATESWARA REDDY

WRIT PETITION No.19784 OF 2005

O R D E R

(Per Sri Justice J.Chelameswar)

This writ petition is filed with a prayer as follows:

> "…… Honourable Court may be pleased to issue Writ of Mandamus or any other appropriate Writ or order declaring the action of the 1st Respondent in detaining the goods worth of Rs.1,14,660/- of block galaxy tiles 4410 square foot detained by the 1st Respondent on 3.9.2005 along with the vehicle bearing No.AP.27V 2939 as arbitrary contrary to the provisions of the VAT Act and Rules read with Central Sales Tax Act and consequently direct the 1st Respondent to release the vehicle along with the goods forthwith."

The petitioner is a proprietary concern carrying on the business of manufacture and sale of granite and granite tiles and also a registered dealer both under Central Sales Tax Act and A.P. Value Added Tax

Act, 2005 with the 2nd respondent herein.

A consignment of Block Galaxy Granite Tiles was sold by the petitioner to M/s. Italia Marbles, Conjoni Road, Chettipuza, Thrishur, State of Kerala vide Invoice No.7, dated 02.09.2005 and dispatched by the petitioner by a lorry bearing No.AP-27V-2939. According to the petitioner, the said consignment was accompanied by all the necessary documents. The said vehicle was detained by the 1st respondent on 03.09.2005 near Chittoor Town and on verification of the material, the

1st respondent came to the conclusion that there are various irregularities in the documents like undervaluation of the goods, inaccurate description of the quantity of material etc. Therefore, the

1st respondent in exercise of the powers under Section 45(6) of the A.P. Value Added Tax Act, 2005 detained the vehicle and consignment. Hence the present writ petition.

When the matter is taken up on 06.09.2005, notice before admission was ordered to enable the learned Special Standing Counsel to obtain instructions in the matter. Today, when the matter is taken up, learned counsel for the petitioner placed before this Court a show cause notice dated 06.09.2005, wherein the 1st respondent proposed to levy tax of Rs.13,021/- and it is also indicated in the said show cause notice that separate action is being initiated for levy of penalty for the alleged offence committed by the petitioner.

Learned counsel for the petitioner submitted that under

Section 45(3)(b)(ii) of the A.P. Value Added Tax Act, 2005, whenever goods are detained on suspicion that there is evasion of tax, the detaining authorities are entitled to direct payment of either tax or furnish security for an amount equal to two times of the amount of tax payable, and therefore, the demand in the show cause notice calling upon the petitioner to provide security for an amount of Rs.39,063/- in the shape of Bank guarantee is illegal. Even according to the show cause notice, the tax liable to be paid on the goods in question, even if all the allegations of the respondents are finally proved, would only be Rs.13,021/-.

Heard the learned Government Pleader.

Section 45(3)(b)(ii) reads as follows:

> "that the sale or purchase of the goods carried has, for the purpose of payment of tax not been properly accounted for in the documents referred to in clause (b) of sub-section (2); and if the said officer is satisfied, after making such enquiry as he deems fit, that with a view to prevent the evasion of tax payable in respect of the sale or purchase of the goods, carried, it is necessary to detain the goods he shall detain the goods and direct the driver or any other person in-charge of the goods vehicle or vessel to pay such tax, or to furnish security for an amount equal to two times the amount of tax payable in such form and in such manner and to such authority as may be prescribed, on behalf of the person liable to pay such tax."

It is obvious from the language of the above-mentioned Section that at the stage of detention of the goods under suspicion that there is evasion of tax, the respondents cannot demand both the tax and the penalty. The penalty proceedings are yet to be initiated.

In the circumstances, we deem it appropriate to allow the writ petition directing the respondents to release the vehicle bearing
No.AP 27-V 2939 along with the consignment that was seized by the respondents on condition that the petitioner deposits an amount of Rs.13,021/- with the respondents.

The writ petition is accordingly allowed.

JUSTICE J.CHELAMESWAR

JUSTICE M.VENKATESWARA REDDY

13th SEPTEMBER, 2005

Note: Issue copy by today

(B/O) PGS

THE HON'BLE MR JUSTICE

J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE

M.VENKATESWARA REDDY

WRIT PETITION No.19784 OF 2005

(Per Sri Justice J.Chelameswar)

13TH SEPTEMBER, 2005